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PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES AND MINORITIES

Working Paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20

1. In its resolution 1999/20 the Sub-Commission recommended that the Chairperson-Rapporteur of the Working Group on Indigenous Populations prepare a working paper for consideration at the preparatory meetings for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The present report is submitted in accordance with that request.

2. The World Conference, due to take place in South Africa in September 2001, is of critical importance for the world's indigenous peoples. It is also the responsibility of States to ensure that indigenous concerns are among those at the forefront of the agenda of the World Conference.

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* See Sub-Commission decision 2000/120.

3. In this respect, I greatly appreciated the intervention made during the discussions under item 15 at the Commission on Human Rights by the representative of the Government of South Africa - the host country for the Conference - when he said that the World Conference presents "an ideal opportunity to highlight the plight and impact of racial and other discrimination on indigenous peoples, as well as the legacy of marginalization and discrimination and violations of civil and political as well as economic, social and cultural rights of indigenous peoples. South Africa looks forward to a constructive, output-driven debate on this issue at the forthcoming World Conference". I share, and I am sure indigenous peoples the world over share, these well-expressed expectations.

4. The issue of indigenous peoples began within the United Nations under the aegis of the Sub-Commission and under the theme of discrimination. It was the Special Rapporteur of the Sub-Commission, Mr. José R. Martinez Cobo of Ecuador, who identified in his comprehensive five-volume Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7 and Add.1-4) the widespread discrimination, exploitation and oppression faced by indigenous peoples.

5. In his conclusions, the Special Raporteur noted that indigenous peoples "were at the bottom of the socio-economic scale. They did not have the same opportunity for employment and the same access as other groups to public services and/or protection in the fields of health, living conditions, culture, religion and the administration of justice. They could not participate meaningfully in political life." The Special Rapporteur appealed to the international community "to take heed of the painful discrimination practised against indigenous peoples, one of the largest but weakest sectors of the world's population."*

6. It may be noted that the Economic and Social Council in authorizing the study was aware of the need for national and international measures to eliminate discrimination against indigenous populations (see council resolution 1589 (L) of 21 May 1971) and called upon the Special Rapporteur to make recommendations accordingly. Furthermore, it should also be mentioned that the two previous World Conferences to Combat Racism and Racial Discrimination (Geneva, August 1978 and August 1983) as well as the Decades for Action to Combat Racism and Racial Discrimination have all included indigenous concerns in their action programmes, including two important expert seminars on indigenous questions (Seminar on the effects of racism and racial discrimination on the economic and social relations between indigenous populations and States, Geneva, 1989 and the Meeting of Experts to review the experience of countries in the operation of schemes of internal self-government for indigenous peoples, Nuuk, Greenland, 1991).

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* Study of the Problem of Discrimination against Indigenous Populations, Vol. V: Conclusions, Proposals and Recommendations, by José R. Martínez Cobo, United Nations publication, Sales No. E.86.XIV.3, Introduction, para. (f).

7. In making reference to the Sub-Commission's pioneering study prepared during the 1970s and earlier United Nations programmes to combat racism in which indigenous issues are incorporated, I seek to underline the relationship between the past and prevailing situation of indigenous peoples and the issue of discrimination.

8. Allow me to observe that indigenous peoples worldwide continue by and large to be disadvantaged in every area of life. They have considerably less access to education in most countries than other groups in society. At the 1998 session of the Working Group on Indigenous Populations, which highlighted indigenous education, we noted the continuing limited access of indigenous peoples to all forms of education, the vulnerability of many indigenous languages, and the often inappropriate and ethnocentric character of mainstream education which denied or denigrated indigenous histories and cultures.

9. The Working Group on Indigenous Populations has observed that indigenous societies faced similar disadvantage in the area of health. We noted that indigenous peoples did not have equal access to national health care systems, were sometimes exposed to industrial or military activities harmful to their health, faced problems related to nutrition when they were denied access to their traditional lands, and encountered minimal recognition of their cultural specific health needs and knowledge of traditional medicine. The World Health Organization, which held a first workshop on indigenous health in November 1999, noted that in general the life expectancy of indigenous people at birth is 10 to 20 years lower than for the rest of the population and that infant mortality is 1.5 to 2 times greater than the national average.

10. I had the possibility of listening to the concerns of indigenous peoples during my 16 years as Chairperson-Rapporteur of the Working Group on Indigenous Populations. I have also been afforded many opportunities to visit indigenous communities and learn at first-hand their needs. Furthermore, it has been my honour to serve as Special Rapporteur, first on the study on the protection of indigenous heritage and at present on the study on indigenous peoples and their relationship to land.

11. These experiences have only confirmed to me that indigenous peoples in many countries continue to be the victims of racism and discrimination. Indeed, I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples - a right recognized for all other peoples - or in the absurd denial of the use of the term "indigenous peoples", contradicting all logic of language and pretending in so doing that the different indigenous peoples of the world do not have a language, history or culture unique to them, or in the insistence by the dominant world that indigenous peoples do not have their own long-established and dynamic systems of knowledge and law.

12. I do not need to belabour this point since it is now well recognized by the international community and States that indigenous peoples face discrimination. The work being undertaken by the Commission on Human Rights to finalize the draft declaration on the rights of indigenous peoples is an implicit recognition that disadvantage is prevalent and needs to be addressed

through an international human rights instrument. States themselves over the past decade have undertaken many measures including the introduction of changes to their constitutions, legislation and administrative procedures, as well as the development of affirmative action programmes to address the special needs and disadvantage of indigenous peoples in all domains.

13. In addition to these positive steps, indigenous peoples have developed their own skills and capacities during recent years and no longer see themselves as victims but as active partners in the changes taking place within States and internationally. The Preparatory Committee needs to take these very important new developments into account as it prepares for the World Conference next year.

14. In concluding, allow me to propose some recommendations concerning indigenous peoples for the consideration of the Preparatory Committee and the World Conference itself:

1. It is very important that the Preparatory Committee ensure a mechanism for the full and active participation of representatives of indigenous peoples and organizations. This is vital for the World Conference itself as well as for the regional and satellite seminars and meetings. It will not be enough for participation to be based upon non-governmental organizations in consultative status with the Economic and Social Council since so few of the world's indigenous peoples are represented through such organizations. I hope that a flexible and open procedure will be found.

2. General Assembly resolution 50/157 of 21 December 1995 adopting the programme of action of the International Decade of the World's Indigenous People recommended that an official observance of the Decade be recognized at international conferences related to the goals and themes of the Decade. I believe that to comply with the spirit of the General Assembly resolution the World Conference should invite indigenous representatives to address the plenary session. As will be recalled, this was the decision taken and implemented at the World Conference on Human Rights.

3. In the preparatory discussions for the World Conference it was suggested that the United Nations High Commissioner for Human Rights organize a seminar on indigenous peoples as part of the preparations. I would like to urge the Office of the High Commissioner to hold a seminar on indigenous peoples and the administration of justice. The seminar would provide an opportunity to exchange information about positive national experiences and to hear about indigenous peoples' own legal systems. I believe such a seminar could bring constructive and relevant information and suggestions to the World Conference.

4. I would also like to suggest that a parallel activity be held at the time of the World Conference, which might take the form of a panel discussion or roundtable, focusing on indigenous peoples and measures being taken to end discrimination against them. This would bring some attention to indigenous concerns and give space to good practices.

5. In my capacity as member of the Advisory Group for the Voluntary Fund for the International Decade, I undertake to recommend to my colleagues on the Advisory Group and through them the High Commissioner that funds be set aside to assist the aforementioned parallel activity as well as the participation of indigenous peoples at the World Conference. In this respect, I would urge Governments to consider contributing to the Fund.

6. The Commission on Human Rights in its resolution 2000/56 of 25 April 2000 recommended that the situation of indigenous people be taken into account in the forthcoming World Conference against Racism. I would recommend that, in order to respect the recommendation, a chapter in both the declaration and the programme of action of the final document of the World Conference be dedicated to indigenous peoples.

7. With respect to the declaratory part of the document, I would recommend that the Conference recognize that indigenous peoples are "peoples" and end once and for all the discriminatory practice of using terms such as indigenous populations or indigenous people when such peoples are referred to collectively.

8. With respect to the programme of activities to be identified by the World Conference, I undertake to request my colleagues of the Working Group on Indigenous Populations to agree to consult with indigenous participants. On the basis of these consultations, the Working Group would make practical proposals in relation to possible activities to be undertaken by Governments, the United Nations system, NGOs and civil society, including schools and institutions of higher education, the media, the private sector and others, with a view to submitting these suggestions to the preparatory process.